



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271 and 272

[EPA-R03-RCRA-2022-0280; FRL-9951-02-R3]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Delaware has applied to the United States Environmental Protection Agency (EPA) for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is hereby authorizing Delaware's revisions through this direct final rule. EPA is additionally removing and reserving codification of Delaware's hazardous waste program.

DATES: This final authorization will become effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives any such comments, EPA will publish a timely withdrawal of this direct final rule in the *Federal Register*.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-RCRA-2022-0351, at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www.epa.gov/dockets/commenting-epa-dockets.

The EPA encourages electronic submittals, but if you are unable to submit electronically or need other assistance, please contact Claudia Scott, the contact listed in the **FOR FURTHER INFORMATION CONTACT** provision below. Please also contact Claudia Scott if you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program is revised to become more stringent or broader in scope, States must revise their programs and apply to EPA to authorize the revisions. Authorization of revisions to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other revisions occur. Most commonly, States must revise their programs because of revisions to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions has EPA made in this rule?

On December 16, 2021, Delaware submitted a final program revision application seeking authorization of revisions to its hazardous waste program that correspond to certain Federal rules promulgated through May 30, 2018. EPA concludes that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA, as set forth in RCRA section 3006(b), 42 U.S.C. 6926(b), and 40 CFR part 271. Therefore, EPA grants Delaware final authorization to operate its hazardous waste program with the revisions described in its authorization application, and as outlined below in Section G of this preamble.

Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

This action serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by this action are already effective and are not changed by this action. Delaware has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;

- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

D. Why wasn't there a proposed rule before this rule?

Along with this direct final rule, EPA is publishing a separate document in the "Proposed Rules" section of this issue of the *Federal Register* that serves as the proposal to authorize these State program revisions. EPA did not publish a proposal before this issue of the *Federal Register* because EPA views this action as a routine program change and does not expect comments that oppose its approval. EPA is providing an opportunity for public comment now, as described in Section E of this preamble.

E. What happens if EPA receives comments that oppose this action?

If EPA receives adverse comments pertaining to this State revision, EPA will withdraw this direct final rule by publishing a document in the *Federal Register* before the rule becomes effective. EPA will base any further decision on the authorization of Delaware's program revisions on the proposal mentioned in the previous section, after considering all comments received during the comment period. EPA will then address all relevant comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

F. What has Delaware previously been authorized for?

Delaware initially received final authorization of its hazardous waste program effective June 22, 1984 (June 8, 1984; 49 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program on August 8, 1996, effective October 7, 1996 (61 FR 41345); August 18, 1998, effective October 19, 1998 (63 FR 44152); July 12, 2000, effective September 11, 2000 (65 FR 42871); August 8, 2002, effective August 8, 2002 (67 FR 51478); March 4,

2004, effective May 3, 2004 (69 FR 10171); October 7, 2004, effective December 6, 2004 (69 FR 60091); and August 10, 2017, effective October 10, 2017 (82 FR 37319).

G. What revisions is EPA authorizing with this action?

On December 16, 2021, Delaware submitted a final program revision application seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21.

Delaware's revision application includes various regulations that are equivalent to, and no less stringent than, selected Federal final hazardous waste rules, as published in the *Federal Register* through May 30, 2018.

EPA now makes a direct final rule, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision application satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Delaware seeks authority to administer the Federal requirements that are listed in Table 1 below. This table lists the Delaware analogs that have been revised; these revisions are being recognized as no less stringent than the analogous Federal requirements.

Delaware's regulatory references are to Delaware's Regulations Governing Hazardous Waste (DRGHW), amended and effective August 21, 2006, December 21, 2007, December 21, 2008, May 21, 2009, April 21, 2016, and January 21, 2021. The statutory references are to 7 Delaware Code annotated (1991).

Table 1—Delaware's Analogs to the Federal Requirements

Description of Federal requirement (Revision Checklists¹)	Federal Register or requirement	Delaware authority²
RCRA Cluster VII		
Criteria for Classification of	61 FR 34252, 7/1/1996	DRGHW 262.14(a)(6),

Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs, Revision Checklist 153		262.14(a)(6)(i)-(iii), 262.14(a)(6)(iv)*, 262.14(a)(6)(v)*, 262.14(a)(6)(vi), 262.14(a)(6)(vii)
RCRA Cluster X		
NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule), Revision Checklist 182	64 FR 52827, 9/30/1999	DRGHW 122.19 introductory paragraph, 122.19(e), 122.22 introductory paragraph, 122.42 Appendix I, 122.62 introductory paragraph, 122.66 introductory paragraph DRGHW 260.10, 264.340(b), 264.340(b)(1)-(2), 264.340(c)-(e), 264.601 introductory paragraph, 265.340(b), 265.340(b)(1)-(2), 265.340(c), 266.100(b), 266.100(b)(1), 266.100(b)(2), 266.100(b)(2)(i)-(iv), 266.100(c), 266.100(d), 266.100(d)(1), 266.100(d)(1)(i)-(iii), 266.100(d)(2), 266.100(d), 266.100(d)(3), 266.100(d)(3)(i)-(ii), 266.100(e)-(h), 266.101(c), 266.101(c)(1), 266.105(c), 266.105(c)(1)-(3), 266.105(d), 266.112(b)(1), 266.112(b)(2)(i), Appendix VIII
RCRA Cluster XII		
Hazardous Air Pollutant Standards for Combustors: Corrections, Revision Checklist 198	67 FR 6968-6996, 2/14/2002	DRGHW 266.100(a), 266.100(b)(1), 266.110(d)(1)(i)(B), 266.100(d)(2)(i)-(ii), 266.100(d)(3), 266.100(d)(3)(i), 266.100(d)(3)(i)(D)
RCRA Cluster XV		

Methods Innovation Rule and SW-846 Final Update IIIB, Revision Checklist 208	70 FR 34538-34592, 6/14/2005 As amended 8/1/2005, 70 FR 44150-44151	<p>DRGHW 122.19(c)(1)(iii)-(iv), 122.22(a)(2)(ii)(B), 122.62(b)(2)(i)(D), 122.66(c)(2)(i)-(ii), 279.10(b)(1)(ii), 279.44(c), 279.53(c), 279.63(c)</p> <p>DRGHW 260.11, 260.119(a)-(g), 260.22(d)(1)(i), 261.3(a)(2)(v) introductory paragraph, 261.21(a)(1), 261.22(a)(1)-(2), 261.35(b)(2)(iii)(A)-(B), Appendix I, Appendix II, Appendix III, 264.190(a), 264.314(b), 264.1034(c)(1)(ii), 264.1034(c)(1)(iv)(B), 264.1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), Appendix IX, 265.1034(c)(1)(ii), 265.1034(c)(1)(iv), 265.1034(c)(1)(iv)(A)-(B), 265.1063(d)(2), 265.1081 “Waste stabilization process”, 265.1084(a)(3)(ii)(C), 265.1084(a)(3)(iii) introductory paragraph, 265.1084(a)(3)(iii)(A)-(B), 265.1084(b)(3)(iii), 265.1084(b)(3)(iii)(A)-(B), 265.1084(c)(3)(i), 266.100(d)(1)(ii), 266.100(g)(2), 266.102(b)(1), 266.106(a), 266.112(b)(1), 266.112(b)(2)(i), Appendix IX, 268.40(b), 268.40 Table/Footnote 7, 268.40 UTS table Footnote 4</p>
RCRA Cluster XVI		
Burden Reduction Initiative, Revision Checklist 213	71 FR 16862-16915, 4/4/2006	<p>DRGHW 122.14(a), 122.16(a), 122.26(c)(15)</p> <p>DRGHW 260.31(b)(2)-(7), - 261.4(a)(9)(iii)(E), 261.4(f)(9), 264.16(a)(4), 264.52(b), - 264.56(i), 264.56(j)*, 264.73(b), introductory</p>

		<p>language*, 264.73(b)(1),(2),(6)*,(8),(10),& (18), 264.98(d)*, 264.98(g)(2)- (3), 264.99(f)*, 264.99(g), 264.100(g)*, 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.174, 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(a)(1), 264.193(a)(2), 264.193(i)(2), 264.195(b), 264.195(c), 264.195(d), 264.196(f), 264.251(c), 264.280(b), 264.314(a), 264.314(b)-(e), 264.314(e)(1)- (2), 264.343(a)(2)*, 264.347(d)*, 264.554(c)(2), 264.571(a)-(c), 264.573(a)(4)(ii), 264.573(g), 264.574(a), 264.1061(b)(2)*, 264.1061(b)(3)*, 264.1062(a), 264.1062(a)(2)*, 264.1100 introductory paragraph, 264.1101(c)(2), 264.1101(c)(4), 265.15(b)(4), 265.52(b), 265.56(i)*, 265.56(j), 265.73(b), introductory language*, 265.73(b)(1),(2),(6)*,(7),&(8), 265.90(e)(1)*, 265.90(e)(3)*, 265.93(d)(2)*, 265.93(d)(5)*, 265.115, 265.120, 265.143(h), 265.145(h), 265.147(h), 265.174, 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(a)(1), 265.193(a)(2), 265.193(i)(2), 265.193(f)(1), 265.195(a), 265.195(a)(1),(2),&(4), 265.196(f)*, 265.195(c)*, 265.201, 265.221(a), 265.224, 265.224(a)*, 265.259(a)*, 265.280(e), 265.301(a), 265.303(a)*, 265.314(a), 265.314(b)-(f), 265.314(f)(1), 265.314(f)(2), 265.441(a), 265.441(b), 265.441(c), 265.443(a)(4)(ii), 265.443(g),</p>
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		265.444(a), 265.1061(b), 265.1061(b)(1)* 265.1061(d)*, 265.1062(a), 265.1062(a)(2)*, 265.1100 introductory paragraph, 265.1101(c)(2), 265.1101(c)(4), 266.102(e)(10)*, 266.103(d)*, 266.103(k)*, 268.7(a)(1), 268.1(a)(2), 268.7(b)(6), 268.9(a), 268.9(d)
RCRA Cluster XXI		
Removal of Saccharin and Its Salts from the Lists of Hazardous Constituents, Revision Checklist 225	75 FR 78918-78926, 12/17/2010, Effective 1/18/2011	DRGHW 261.33(f) Table, 261 Appendix VIII, 268.40 Table of Treatment Standards, 268 Appendix VII
Revision of the Land Disposal Treatment Standards for Carbamate Wastes, Revision Checklist 227	76 FR 34147-34157, 6/13/2011	DRGHW 268.40 Table of Treatment Standards, 268.48 Table of UTS-Universal Treatment Standards
RCRA Cluster XXII		
Hazardous Waste Technical Corrections and Clarifications Rule, Revision Checklist 228	77 FR 22229-22232, 4/13/2012	DRGHW 261.32(a) Table, 266.20(b)
RCRA Cluster XXIII		
Hazardous Waste Electronic Manifest Rule, Revision Checklist 231	79 FR 7518-7563, 2/7/2014	DRGHW 260.2(a)-(b), 260.10, 262.20(a)(3), 262.20(a)(3)(i)-(ii) 262.24, 262.25, 263.20(a)(1)-(8), 263.25, 264.71(a)(2)(i)-(v), 264.71(a)(2)(vi), 264.71(f)-(k), 265.71(a)(2), 265.71(a)(2)(i)-(vi), 265.71(f)-(k)
Revisions to the Export Provisions of the Cathode Ray Tube (CRT) Rule, Revision Checklist 232	79 FR 36220-36231, 6/26/2014	DRGHW 260.10, 261.39*, 261.39(a)(5)(i)(F)*, 261.39(a)(5)(x)-(xi)*, 261.41*
RCRA Cluster XXIV		

Changes affecting all non-waste determinations and variances More stringent for all state programs Revisions to the Definition of Solid Waste, Revision Checklist 233A	80 FR 1694-1814, 1/13/2015	DRGHW 260.31(c), 260.31(c)(1)-(5), 260.33 section heading*, 260.33(c)-(e)*, 260.42 section heading, 260.42(a)*, 260.42(a)(1)-(9), 260.42(b)
Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained More stringent for all state programs. Revisions to the Definition of Solid Waste, Revision Checklist 233B	80 FR 1694-1814, 1/13/2015	DRGHW 260.10 “contained”, 260.10 “Hazardous secondary material”, 260.43(a) section heading, 260.43(a), 260.43(a)(1), 260.43(a)(1)(i)-(v), 260.43(a)(2), 260.43(a)(2)(i)-(ii), 260.43(a)(3), 260.43(a)(4), 260.43(a)(4)(i), 260.43(a)(4)(i)(A)-(B), 260.43(a)(4)(ii), 260.43(a)(4)(ii)(A)-(B), 260.43(a)(4)(iii), 260.43(b)-(c), 261.2(b)(4), 261.2(g)
Speculative Accumulation, Revisions to the Definition of Solid Waste, Revision Checklist 233C	80 FR 1694-1814, 1/13/2015	DRGHW 261.1(c)(8)
Consolidated Checklist C9		
Land Disposal Restrictions, as of June 30, 2018	40 CFR part 268	DRGHW part 268

¹ A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the *Federal Register*. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal regulations. For more information see EPA's RCRA State Authorization Web page at <https://www.epa.gov/rcra/state-authorization-under-resource-conservation-and-recovery-act-rcra>.

² Unless otherwise indicated, all Delaware citations are from the state's 2021 regulations.

H. Where are the revised Delaware rules different from the Federal rules?

1. Delaware Requirements That Are More Stringent Than the Federal Program

Delaware’s hazardous waste program contains several provisions that are more stringent than the RCRA program. The more stringent provisions are part of the Federally authorized program

and are, therefore, federally enforceable. The specific more stringent provisions are also noted with an asterisk in Table 1 of this preamble and in Delaware's authorization application. They include, but are not limited to, the following:

- a) The Federal regulations, at 40 CFR 260.21(d), state that any person may petition for a regulatory amendment to add a testing or analytical method. Delaware's regulations do not allow such petitions and, as a result, are more stringent than the federal requirement.
- b) The Federal regulations, at 40 CFR 260.33, detail the procedures the Administrator will use in evaluating applications for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations. The Delaware regulations, at DRGHW 260.33, detail the procedures the Secretary of DNREC will use in evaluating applications for variances from classification as solid waste or variances to be classified as a boiler. The Delaware regulations do not allow applications for non-waste determinations and, as such, are more stringent than the Federal requirements.
- c) The Federal regulations, at 40 CFR 260.42(a), state that facilities managing hazardous secondary materials under an approved variance must send a notification to EPA every two years. The Delaware regulations, at DRGHW 260.42(a), require notifications to DNREC every year. Because Delaware requires annual notifications while EPA requires notifications every two years, this Delaware requirements is more stringent than the Federal requirement.
- d) The Federal regulations, at 40 CFR 261.39, include a list of conditions that used, broken CRTs must meet in order to be excluded from consideration as solid wastes. The Delaware regulations, at DRGHW 261.39 and 261.41(a), specify that CRTs are considered solid waste but used, intact or broken CRTs are not hazardous waste if they meet the listed conditions. Because the Delaware regulations do not exclude CRTs from consideration as solid wastes, the state requirements are more stringent than the Federal requirements. Additionally, the Federal regulations, at 40 CFR 261.39(a)(5)(i)(F),

(a)(5)(x), and (a)(5)(xi), require exporters of used, broken CRTs to notify EPA of an intended export before the CRTs are scheduled to leave the United States, to file with EPA an annual report summarizing the quantities, frequency of shipment, and ultimate destination(s) of all used CRTs exported during the previous calendar year. The Delaware regulations, at DRGHW 261.39(a)(5)(i)(F), (a)(5)(x), and (a)(5)(xi), require that exporters of used, intact or broken CRTs notify both EPA and the DNREC Secretary of an intended export before the CRTs are scheduled to leave the United States, and that the annual report be filed with EPA, with a copy sent to the DNREC Secretary. Because Delaware's requirements apply to exporters of intact CRTs in addition to exporters of used, broken CRTs, and because the Delaware regulations require exporters to notify DNREC in addition to EPA, the Delaware regulations are more stringent than the Federal requirements.

- e) In several places, the Federal regulations require that notices and reports be submitted to the Agency. Delaware's regulations also require the submittal of those notices and reports, but additionally require that the notices and reports be submitted to the Secretary of DNREC. These additional requirements are found at DRGHW 261.41(b) and (c), 264.56(j), and 264.343(a)(2). Additionally, Delaware regulations require that notifications and documents be provided to the Secretary in a number of instances where the Federal regulations do not require such notifications or submittals. These additional requirements are found at DRGHW 264.1061(b)(1), 264.1062(a)(2), 265.56(i), 265.90(e)(1) and (e)(3), 265.93(d)(2) and (d)(5), 265.196(f), 265.224(a), 265.259(a), 265.303(a), 265.1061(b)(1), 265.1061(d), and 265.1062(a)(2). As a result, the above Delaware regulations are more stringent than the Federal requirements.
- f) The Federal regulations, at 40 CFR 262.14(a)(5)(iv) and (v), allows very small quantity generators (VSQGs) to either treat or dispose of their hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility as long as

the facility is in the United States and is permitted, licensed, or registered by a state to manage municipal solid waste or non-municipal non-hazardous waste. Delaware has reserved the analogous subsections at DRGHW 262.14(a)(6)(iv) and (v), and does not allow VSQG waste to be sent to non-hazardous waste landfills. As a result, the Delaware regulations are more stringent than the Federal requirements.

- g) The Federal regulations, at 40 CFR 264.73(b), introductory language, 264.73(b)(6) and (b)(18), 264.347(d), 265.73(b), introductory language, 265.73(b)(6), and 266.102(e)(10) require that facilities record and maintain certain records for three or five years, as specified. The Delaware regulations, at DRGHW 264.73(b), introductory language, 264.73(b)(6), 264.347(d), 265.73(b), introductory language, 265.73(b)(6), and 266.102(e)(10) require facilities to maintain those records until closure of the facility. Additionally, at 40 CFR 266.103(d) and (k), the Federal regulations require owners or operators to recertify compliance within five years from submitting the previous certification and to maintain required records for five years, while the Delaware regulations, at DRGHW 266.103(d) and (k), require recertification within three years and maintenance of the records until closure of the unit. As a result, the above Delaware regulations are more stringent than the Federal requirements.
- h) The Federal regulations, at 40 CFR 264.98(d) and 264.99(f), state that the Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination. The Delaware regulations, at DRGHW 264.98(d) and 264.99(f), specify that a sequence of at least four samples from each well must be collected at least semi-annually. Because of this additional requirement, the above Delaware regulations are more stringent than the Federal requirements.
- i) The Federal regulations, at 40 CFR 264.100(g), require owners or operators to submit written reports on the effectiveness of the corrective action program on an annual basis.

The Delaware regulations, at DRGHW 264.100(g), require that these reports be submitted semi-annually. As a result, the Delaware regulations are more stringent than the Federal requirements.

- j) The Federal regulations, at 40 CFR 264.113(d) and (e), authorize the Regional Administrator to allow closed facilities to accept non-hazardous waste if they meet certain requirements. Delaware did not adopt these two subparagraphs. Therefore, in this respect, the Delaware requirements are more stringent than the Federal program.
- k) The Federal regulations, at 40 CFR 265.113(e), allow owners or operators of a hazardous waste surface impoundment that is not in compliance with the liner and leachate collection system to operate as long as they meet certain listed requirements. Delaware's regulations do not allow these activities at all. As a result, the Delaware regulations are more stringent than the Federal requirements.
- l) Delaware's regulations, at DRGHW 265.195(a), state that owners or operators of facilities that use tank systems for storing or treating hazardous waste must inspect specified areas at least once each operating day. The Federal regulations, at 40 CFR 265.195(b), include the same requirement. Additionally, at 40 CFR 265.195(c), the Federal regulations allow certain facilities to inspect those areas weekly. The Delaware regulations do not allow for this alternate inspection schedule and, as a result, are more stringent than the Federal requirements in this respect.
- m) The Federal regulations, at 40 CFR 265.195(f) and (g), require an owner or operator of a facility with tank systems to inspect cathodic protection systems and keep records of the inspections. The Delaware regulations, at DRGHW 265.195(b) and (c), include the same requirements. Additionally, DRGHW 265.195(c) provides that generators must submit a written record of inspections and maintain the record onsite for a minimum of three years. This additional requirement for generators is more stringent than the Federal requirements.

I. Who handles permits after the authorization takes effect?

After this authorization revision, Delaware will continue to issue permits covering all the provisions for which it is authorized and will administer all such permits. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that it issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as EPA formally transfers responsibility for a permit to Delaware and EPA terminates its permit, EPA and Delaware agree to coordinate the administration of such permit in order to maintain consistency. EPA will not issue any more new permits or new portions of permits for the provisions listed in Section G of this preamble after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. How does this action affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authority to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in Delaware.

K. What is codification and is EPA codifying Delaware's hazardous waste program as authorized in this rule?

Codification is the process of placing a state's statutes and regulations that comprise the state's authorized hazardous waste program into the Code of Federal Regulations. We do this action by referencing the authorized state rules in 40 CFR part 272. On January 31, 1986, EPA codified the initial EPA-approved Delaware State program in 40 CFR part 272 subpart I (51 FR 3954). The current codification is out of date because the authorized Delaware State program has been amended since 1986. EPA is now removing and reserving the language in 40 CFR part 272 subpart I, §§ 272.400 and 272.401. EPA's initial January 1986 authorized program

approval and all subsequent updates have been accomplished through notice-and-comment rulemaking, and EPA believes the scope and content of the authorized Delaware State Program is sufficiently clear without codification in 40 CFR part 272.

L. Administrative requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements pursuant to RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). In any case, Executive Order 13175 does not apply to this rule since there are no Federally recognized tribes in Delaware.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant, and it

does not concern environmental health or safety risks that may disproportionately affect children. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that satisfies the requirements of RCRA. Thus, the requirements of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note, section 12(d)(3)) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Burden is defined at 5 CFR 1320.3(b).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State

rules which are at least equivalent to, and no less stringent than, existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will not be effective until **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Adam Ortiz,
Regional Administrator,
U.S. EPA Region III.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C 6912(a), 6926, and 6974(b).

§§ 272.400 and 272.401 [Removed and Reserved]

2. Remove and reserve §§272.400 and 272.401.

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